

General Information Letter: In general, an employer must withhold Illinois income tax from compensation paid in Illinois if federal income tax must be withheld from the compensation.

November 27, 2000

Dear:

This is in response to your letter dated October 23, 2000. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c), which can be obtained at the following website:

<http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated the following:

For us in our xxx PAYROLL MANAGEMENT GUIDE, we would greatly appreciate your help in the following matters:

1. Qualified employer-provided **transportation fringe benefits** under federal law includes transit passes, transportation in a commuter highway vehicle to and from work, and qualified parking at or near the work place. The combined exclusion from federal income tax withholding, FICA, and FUTA cannot exceed \$65.00 per month and the exclusion for parking cannot exceed \$175.00 per month.

Are qualified employer-provided transportation benefits subject to state income tax withholding in your state? What are the monthly dollar limits in your state?

2. What is your state's withholding treatment of incentive, qualified, restrictive, and non-qualified **stock options**? Generally, under the federal rules, statutory (qualified) stock options are not taxable to an employee either when they are granted or disposed of unless disposed of through a disqualifying disposition. Non-statutory (nonqualified) stock options are subject to withholding when the options are exercised. If withholding is required, which withholding method should be used?

3. What is your state's withholding treatment of contributions to and distributions from **nonqualified pension plans**? If withholding is required, which withholding method should be used?

## **Response**

The Illinois Income Tax Act (IITA) ties this State's withholding requirements to those of the Internal Revenue Service. IITA §701(b) declares that:

Any payment, (including compensation) by a payor maintaining an office or transacting business within this State and on which withholding of tax is required under the provisions of

the Internal Revenue Code shall be deemed to be compensation paid in this State by an employer to an employee for the purposes of Article 7 and Section 601(b)(1) to the extent such payment is included in the recipient's base income and not subjected to withholding by another State.

IITA §701(e) introduces exceptions to this general rule which are not relevant to your inquiry. Exceptions are also discussed in the State's Income Tax Regulations (86 Ill Admin. Code 100.7030(c)). The cited paragraph makes it clear that payments from "qualified employee benefit plans", which are subtracted from base income by IITA §203(a)(2), are not subject to withholding. In addition, any amount of income exempt from taxation by the Illinois Constitution or the United States Constitution, treaties or statutes will not be subject to withholding.

The first two types of income you mention are not specifically addressed by the Illinois Income Tax Act or its regulations. In those instances, federal withholding rules will be followed by this State under the general principle of IITA §701(b), quoted above. The third type, nonqualified pension plans, also are not directly addressed, but qualified pension plans are specifically exempted from withholding by the regulations. It can easily be concluded that payments from non-qualified plans are subject to withholding by this State to the same extent as required by the Internal Revenue Code.

Please do not hesitate to call me at (217) 782-2844 if you have further questions. As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department as a definitive statement of law. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax